

CHAPTER 1

STOCKBRIDGE-MUNSEE TRIBAL LAW TRIBAL COURT CODE

ESTABLISHING THE COURT; JUDGES; COURT PERSONNEL

Section 1.1 Council Findings

(A) Recognizing that tribal self-sufficiency cannot be fully realized without first exerting control over such matters as may be vital to tribal interests, the Stockbridge-Munsee Tribal Council finds:

- (1) That Article VII, Section 1 (f) of the Stockbridge-Munsee Community Constitution and By-Laws (approved November 18, 1937) that states in part: "To promulgate and enforce ordinances, subject to the approval of the Secretary of the Interior, governing the conduct of members of the Community....and establishing proper agencies for law enforcement of the Community," authorizes the creation of a tribal court system and adoption of a comprehensive code of law; and
- (2) That the Stockbridge-Munsee Community desires to deal fairly and equitably with all persons; and
- (3) That the Stockbridge-Munsee Community desires to administer in a just and impartial fashion, all applicable laws, ordinances, regulations and policies; and
- (4) That the Stockbridge-Munsee Community would best be served by a judicial system separate and independent of the legislative branch of tribal government; and
- (5) That the Stockbridge-Munsee Community desires to preclude state infringement of tribal sovereignty in all matters essential to the tribe's goal of self-sufficiency.

Section 1.2 Jurisdiction

(A) The Court shall exercise the general judicial jurisdiction of the Stockbridge-Munsee Community and other additional jurisdiction where such is not prohibited by federal law:

- (1) The Stockbridge-Munsee Tribal Court shall exercise jurisdiction over all matters within the power and authority of the Stockbridge-Munsee Community including controversies arising out of the Constitution of the Stockbridge-Munsee Community; laws, statutes, ordinances, resolutions and codes enacted by the Stockbridge-Munsee Tribal Council; and such other matters arising under enactments of the Tribal Council or the customs and traditions of the

Stockbridge-Munsee Community. This jurisdiction extends over the Stockbridge-Munsee Community and its territory, persons who enter its territory, its members, and persons who interact with the Tribe or its members wherever found.

Section 1.3 Purpose and Construction

(A) DECLARATION OF PURPOSE. This Code shall be interpreted and understood to accomplish the following tribal objectives:

- (1) To exert jurisdiction over all matters essential to the Tribe's goal of self-determination and self-governance; and
- (2) To provide orderly procedures for resolving conflicts that reflect tribal traditions as well as the prevailing community standards, and which afford all affected persons a fair, prompt and impartial hearing; and
- (3) To establish a court system for the interpretation of Stockbridge-Munsee Tribal Law and such other law as may properly come before the Court; and
- (4) To ensure that all matters shall be conducted in a manner so as to afford all persons who appear before the Stockbridge-Munsee Tribal Court all rights guaranteed by the Stockbridge-Munsee Bill of Rights; and
- (5) To ensure that the sovereignty of the Stockbridge-Munsee Community is recognized in all matters affecting the welfare of the Stockbridge-Munsee Community, Band of Mohican Indians.

(B) CONSTRUCTION. This code is exempted from the rule of strict construction. It shall be read and understood in a manner that gives full effect to the purposes for which it is enacted. Whenever there is uncertainty or a question as to the interpretation of certain provisions of this code, tribal law or custom shall be controlling and where appropriate may be based on the written or oral testimony of a qualified tribal elder, historian or other representative.

Section 1.4 Court Funding

(A) When allocating the budget money for the Tribal Court, the amount of money appropriated by the Tribal Council for the Tribal Court budget shall not be less than \$117,000.

Section 1.5 Definitions

(A) JUDGE PRO TEMPORE: A person, qualified to be a judge of the Stockbridge-Munsee Tribal Court, who is appointed by the Tribal Council to temporarily fill an unexpired judicial term of office or any portion thereof.

(B) **SUBSTITUTE JUDGE:** A judge of any tribal court, qualified through training, education or experience, who is appointed by the Tribal Council to preside over a Stockbridge-Munsee Tribal Court proceeding when all Stockbridge-Munsee Tribal Court judges are unavailable due to absence or disqualification.

(C) **STOCKBRIDGE-MUNSEE COMMUNITY LAW OR TRIBAL LAW:** The Stockbridge-Munsee Community Tribal Constitution and all codes, ordinances, regulations and policies duly adopted by Tribal Council resolution and tribal customs.

(D) **AUTHORIZED ENFORCEMENT OFFICERS.** Stockbridge-Munsee Community tribal law enforcement officers and such other enforcement officers as may be recognized by the Tribe.

(E) **VIOLATION NOTICE.** An order, issued by authorized law enforcement personnel to a suspected violator in connection with a violation of tribal law, to appear before the Stockbridge-Munsee Tribal Court at a later date; commonly known as a citation or notice of infraction.

(F) **STOCKBRIDGE-MUNSEE TRIBE OR “TRIBE”.** The Stockbridge-Munsee Community Band of Mohican Indians, unless the context in which “Tribe” is used clearly indicates otherwise.

(G) **STOCKBRIDGE-MUNSEE COMMUNITY RESERVATION OR STOCKBRIDGE-MUNSEE RESERVATION:** Means all lands of the Stockbridge-Munsee Community and members thereof, falling within the purview of 18 U.S.C. Section 1151, Indian Country defined.

(H) **IMMEDIATE FAMILY** shall include the spouse, parents, grandparents, foster parents, children, foster children, grandchildren, foster grandchildren, brothers, sisters, aunts and uncles or the person or person's spouse, son-in-law, daughter-in-law, father-in-law, mother-in-law, sister in-law, brother-in-law, nieces and nephews.

Section 1.6 The Court

(A) The Stockbridge-Munsee Community Tribal Council does hereby establish for the Stockbridge-Munsee Community a court to be known as the Stockbridge-Munsee Tribal Court, hereinafter Court.

(B) The Court shall consist of one Chief Judge and one or more Associate Judge(s) as, nominated by the Tribal Council and confirmed by the voting-age tribal membership, and other judicial officers as may be appointed by the Stockbridge-Munsee Community Tribal Council. The Stockbridge-Munsee Tribal Council is responsible for initiating the nomination process in order to maintain at least two judges in the judiciary at all times.

(C) NOMINATION AND CONFIRMATION PROCESS

(1) The Tribal Council will accept applications for the position of Tribal Judge from any tribal member who meets the qualifications listed in this section. All applications must be received by the Tribal Secretary no later than 30 days prior to a regular tribal election or a special election under (6).

(2) No later than one week prior to the election, the Tribal Council shall, by majority vote and in open session, nominate as many candidates as it deems necessary to fill the needs of the Court. But in any case, there shall always be at least two judges on the Court.

(3) The names of the candidates nominated by the Tribal Council shall appear on the ballot at the election. Each name shall appear with a space for marking YES and a space for marking NO.

(4) In order to be confirmed, the candidate must receive a greater number of YES votes than NO votes, **Provided** that at least thirty (30) percent of those voting in the general election cast a vote in that judge's confirmation.

(5) If less than 30 percent of the voters as described in (4) participate, then the Tribal Council shall by majority vote appoint a judge to the seat.

(6) Except as provided in (5), if after the election, the Tribal Council determines that more judges are needed for the Court, or less than two judges are confirmed, the process described here may be repeated with an election date no later than 40 days after the last election.

(7) A majority of the Tribal Council shall appoint the Chief Judge from among the confirmed tribal judges.

(D) The judges' terms shall be for 10 years except that the judges confirmed in the first election held after the enactment of this ordinance shall serve staggered terms of 10, 8 and 6 years, to be determined by lot after the judges have been nominated and confirmed. If more than three judges are nominated and confirmed at the first election after enactment, then additional 8 year terms shall be added to the lot. Judges shall not be subject to removal by the Tribal Council except upon 5/7 vote of the Council and only for cause of illegal conduct, violation of the Stockbridge-Munsee Community Judicial Code of Ethics, physical or mental inability to carry out the duties of office, or ineligibility under (M) to serve as a member of the judiciary.

(E) The Tribal Council may appoint a JUDGE PRO TEMPORE to fill an unexpired judicial term or any part thereof. Appointment shall require a resolution passed under regular Tribal Council rules.

(F) No person shall serve as judge while serving as a member of the Tribal Council or as a tribal law enforcement officer.

(G) No judge shall be qualified to act in any case wherein he or she has any direct interest in the matter before the Court. A trial judge shall not, unless his or her services are agreeable with all parties and only after explaining his or her relationship pursuant to the Judicial Code of Ethics, sit on any case where he or she is related as an immediate family member to one of the parties in the case.

(H) In any case where all judges have been prevented from presiding by virtue of disqualification, illness, or absence, the Clerk of Courts shall contact the Wisconsin Tribal Judges Association (WTJA). The WTJA shall provide a SUBSTITUTE JUDGE who shall be selected at random from the WTJA judges available to serve as a substitute judge for the Court.

(I) Court officers, excluding the judges, shall be appointed by the Tribal Council pursuant to tribal personnel policy. Unless otherwise provided by the Tribal Council, the Chief Judge may fill staff vacancies and fire employees except as to those serving as judge(s), prosecutor(s), court clerk, or in any defender capacity. All court personnel, except those serving a prosecutorial or defender position, shall be subject to the supervision of the Chief Judge.

(J) Judges shall receive such compensation as shall be set by the Tribal Council.

(K) The Court shall exercise appellate responsibility over all administrative hearings of the Tribe.

(L) The Stockbridge-Munsee Tribal Court of Appeals shall have jurisdiction over appeals from the Trial Tribal Court.

(M) **QUALIFICATIONS FOR JUDGES.** Judges nominated and confirmed by the Stockbridge-Munsee Tribe shall be a member of the Stockbridge-Munsee Community, at least thirty-five (35) years of age, shall have a minimum education of high school graduate or the equivalent, and shall demonstrate fitness and competency for the office. No person convicted of a felony shall serve as a Judge. All applicants will be subject to a background investigation to insure compliance with these qualifications.

Section 1.7 Peacemaker Program

(A) The Stockbridge-Munsee Tribal Court shall have the power to administer a Peacemaker Program. Such program shall be paid for out of the budget for the Court.

(B) The Court shall be responsible for all aspects of the Peacemaker Program including the hiring, training and supervision of Peacemakers.

Section 1.8 Tribal Prosecutor

- (A) The Tribal Council shall appoint a person or persons to represent the Stockbridge-Munsee Community in prosecuting cases before the Court.
- (B) The Prosecutor shall be appointed by the Tribal Council pursuant to tribal personnel policy.
- (C) The Prosecutor may be removed for cause by the Tribal Council upon 5/7 vote of the Council.
- (D) The Prosecutor shall have the power to issue complaints on the basis of his/her own investigation or on the basis of information furnished by enforcement officers or others.
- (E) The Prosecutor shall have discretion to decline to prosecute an action where he/she shall find that there is not sufficient justification for the complaint.
- (F) The Prosecutor shall represent the people of the Stockbridge-Munsee Community in all proceedings of the Nation in Tribal Court in which the Tribe is a party, acting on their behalf and in their best interests.
- (G) The Prosecutor shall be empowered to establish policies and procedures not inconsistent with tribal law necessary to carry out the duties of office.
- (H) The Prosecutor shall receive such compensation as shall be set by the Tribal Council.
- (I) The Tribal Attorney or a staff attorney may serve as Prosecutor and his or her regular salary shall be the compensation.

Section 1.9 Court Clerk

- (A) The Chief Judge shall hire a person to serve as Court Clerk.
- (B) The Clerk may be required to furnish a bond satisfactory to the Tribal Council.
- (C) The duties of the Court Clerk shall be set by the Chief Judge.

Section 1.10 Tribe as a Party

- (A) In any case where the Tribe has a significant interest in being a party, the Tribe may petition to be joined as a party and shall join the case as a party.
- (B) The Tribe shall be deemed to have a significant interest in the following cases:
 - (1) the prosecution of violations of tribal law;

- (2) in the defense of tribal administrative decisions which are being appealed;
- (3) where the constitutionality of a Tribal Council action is being challenged in Court;
- (4) any case involving a Stockbridge-Munsee child who is under the age of 18, who is an enrolled member, who is enrollable as a member or who is considered a tribal member by the Community for the purposes of enforcing the Indian Child Welfare Act;

(C) In all other situations other than those listed in (B), when the Tribe petitions to be joined as a party, the Court shall decide whether the Tribe has a significant interest in the case.

(D) In any case where the Tribe may have an interest, regardless if the Tribe or its employees, officers, agencies are named as a party, the Tribal Court shall provide written notice of the case to the Tribe's Legal Department and Tribal Council before the matter may be heard and before any action can be taken.

- (1) For the purposes of this section, interest means an issue or question involving Tribal sovereignty or jurisdiction, the validity of Tribal law, or other actions of the Tribe, its employees, officers and agencies.

Section 1.11 Sovereign Immunity

(A) The Stockbridge-Munsee Community is immune from suit except to the extent that the Tribal Council expressly waives sovereign immunity and except as authorized by this section.

(B) Any official or employee of the Stockbridge-Munsee Community acting within the scope of their duties shall be immune from suit. Officials and employees who act beyond the scope of their duties and authority shall be subject to suit in law and equity for declaratory judgment and prospective injunctive relief in the Stockbridge-Munsee Tribal Court by persons subject to the jurisdiction of the Stockbridge-Munsee Tribal Court for purposes of enforcing rights and duties established by the Constitution or other applicable laws. No money damages shall be available in suits under this section.

(C) Persons subject to the jurisdiction of the Stockbridge-Munsee Community shall exhaust all remedies available to them under the Constitution and the laws of the Stockbridge Munsee Community before seeking redress of grievance against the Stockbridge-Munsee Community in the courts of the United States under any law of the United States granting those persons such rights, unless specifically agreed to otherwise by the parties.

Section 1.12 Rule-Making Power

(A) The Stockbridge-Munsee Tribal Court may from time to time prescribe Rules of Procedure for the conduct of Court business.

TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

Section 1.13 Temporary Restraining Orders

(A) A written complaint must be filed with the court before a temporary restraining order may be issued. A temporary restraining order may be granted only where:

(1) The applicant shows to the court clear and convincing evidence that immediate and irreparable injury, loss, or damage will result to the applicant if the temporary restraining order is not granted;

(2) The adverse party has been given notice that the applicant has applied to the court for a temporary restraining order. The notice requirement contained in this section can only be waived where the applicant or his/her advocate certifies in writing to the court that his/her efforts, if any, to provide the notice and the reasons supporting the claim that notice should not be required; and

(3) The applicant provides to the court a bond or other such security as the court deems proper to protect the interests of the adverse party and for payment of such costs and damages as may be incurred by any party found to have been wrongfully enjoined or restrained. No such security shall be required of the Stockbridge-Munsee Community or of any officer of the Stockbridge-Munsee government acting in his or her official capacity.

(B) Every injunction and/or temporary restraining order shall:

(1) set forth, in writing, the reasons for its issuance;

(2) be specific in its terms;

(3) describe with specificity the act or acts that are to be restrained;

(4) define the injury and state why it is irreparable;

(5) state the date and hour of its issuance;

(6) if granted without notice, state why it was granted without notice;

(7) expire at a definite time, not to exceed ten calendar days, unless extended for good cause shown, or by consent of the adverse party.

(C) On two days notice to a party who obtained a temporary restraining order without notice, or on such shorter notice as the court may prescribe, the adverse party may appear and move that the order be dissolved or modified.

(D) INJUNCTIONS. The Stockbridge-Munsee Tribal Court may issue permanent injunctions ordering the defendant to perform or restrain from certain acts only after a hearing with notice to all parties affected, and upon a written complaint, filed with the court at least five calendar days prior to the hearing that states with specificity the act or acts sought to be restrained and the reasons that support the relief sought. The court shall only grant an injunction after considering the following factors:

- (1) the significance of the threat of irreparable harm to plaintiff if the injunction is not granted;
- (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; and
- (3) the public interest.

(E) In granting the injunction, the court shall:

- (1) set forth, in writing, the reasons for its issuance,
- (2) be specific in its terms;
- (3) describe, with specificity, the act or acts that are to be restrained;
- (4) define the injury and state why it is irreparable; and
- (5) state the date and hour of its issuance, and when it expires, if applicable.

(F) Restraining orders and injunctions for domestic abuse cases shall be issued under the Family law section of the Stockbridge-Munsee Tribal Laws.

(G) Harassment Temporary Restraining Orders and Injunctions.

- (1) In this subsection, “course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose;
- (2) “credible threat” means a threat made with the intent and apparent ability to carry out the threat;
- (3) “harassment” or “harassed” means any of the following:
 - (a) Striking, shoving, kicking, or otherwise subjecting another person to physical contact or physical harm, or attempting to do the same.

- (b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.
- (c) Engaging in a course of conduct that evidences a credible threat against another.

(4) Commencement of Action.

(a) An action under this subsection may be commenced by filing a petition that allege facts sufficient to allege the following:

- i. The name of the person who is the petitioner.
- ii. The name of the respondent.
- iii. That the respondent has harassed the alleged victim.

(5) Temporary Restraining Order.

(a) A judge may issue a temporary restraining order that orders the respondent to cease or avoid the harassment of another person, and other reasonable orders if,

- i. The petitioner files a petition alleging the facts and requirements contained in subsection 1.13(G)(4)(a); and,
- ii. The judge finds reasonable grounds to believe that the respondent has harassed the petitioner.

(b) Notice need not be given to the respondent before issuing a temporary restraining order. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held regarding the issuance of an injunction under subsection 1.13(G)(6). A temporary restraining order is not voided if the respondent violates the temporary restraining order. A judge shall hold a hearing regarding issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended by the Court upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence in attempting to serve the respondent.

(6) Injunction.

(a) A judge may grant an injunction ordering the respondent to cease or avoid the harassment of another person, or other reasonable restrictions if all of the following occur:

- i. The petitioner has filed a petition alleging the facts and requirements contained in subsection 1.13(G)(4)(a); and,
 - ii. The petitioner serves upon the respondent a copy of the restraining order obtained under subsection 1.13(G)(5) and notice of the time for the hearing on the issuance of the injunction under subsection 1.13(G)(5)(c); and,
 - iii. A hearing is held and the judge finds reasonable grounds to believe that the respondent has harassed the petitioner.
- (b) The injunction may be entered only against the respondent named in the petition.
- (c) The injunction under this subsection is effective according to its terms, but shall not be more than 2 years, unless the Court finds good cause to extend the injunction.
- (7) Relationship to other laws.
Nothing in this section is intended to effect or replace the enforcement mechanisms that may be available under Chapter 16, Public Peace and Good Order Ordinance, or any other Tribal law.

DISPOSITION; ENFORCEMENT OF JUDGMENT

Section 1.14 Revocations

- (A) Where any violation involves the misuse of a license or permit issued pursuant to tribal law, the Court shall have power to order revocation or suspension of such license or permit.
- (B) Where a license or permit issued pursuant to tribal law is revoked, the violator shall be barred from receiving any other license or permit under tribal law for at least one (1) year, except where Stockbridge-Munsee Tribal Law shall provide otherwise.
- (C) The Court may recommend to the Tribal Council that a person be excluded from the Stockbridge-Munsee Reservation and/or denied the privilege of doing business or exercising other privileges granted by the Tribe under Tribal Law. Such recommendation shall be made only when the person has committed three (3) violations within a twenty-four (24) month period, at least two (2) of which were serious enough to require forfeitures of one hundred dollars (\$100.00) or more; or as otherwise provided for by Tribal Law.

Section 1.15 Maximum Forfeitures

- (A) Where not otherwise provided, the maximum forfeiture for any violation of a tribal ordinance shall be one-thousand dollars (\$1000.00).

Section 1.16 Default Judgment

(A) Except as otherwise provided, upon a failure of a defendant to appear at the Trial Court within two (2) days of failing to answer a complaint or petition or failing to appear at a scheduled appearance, the Court may entertain a motion for default judgment. The plaintiff or petitioner may thereupon proceed to offer evidence including proof that the defendant was properly served with a summons and complaint. The Court may thereupon render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within ten (10) days of a default judgment, after showing good cause for his or her failure to appear.

(B) Upon failure of any party to appear for trial or other proceeding, the Court may entertain a motion from another party that default judgment of dismissal be granted. The Court may thereupon render a judgment granting such relief as the evidence warrants provided that the defaulting party may apply in writing for a new trial within ten (10) days of a default judgment, after showing good cause for his or her failure to appear.

Section 1.17 Community Service

(A) The Court in its discretion may, in addition to or in lieu of any other remedy allowed under tribal law, require offenders to perform community service. The amount of community service to be performed by an offender may not exceed 100 hours for any single offense.

Section 1.18 Alternative Sentencing

(A) When sentencing the defendant, the court shall have discretion to tailor a disposition that will be the most effective in addressing the defendant's violation, the needs of the community and any harm to the victim, if the violation involved a victim.

(B) In the event the Court makes a finding that restitution is due the victim, the Court may order the defendant to pay restitution to the victim.

Section 1.19 Enforcement of Judgment

(A) All civil remedies are available to enforce the judgment of the Court, including the power of civil contempt. A judgment shall be a lien upon any available property of the defendant which is located within the Stockbridge-Munsee Reservation or within the jurisdiction of the Court.

Section 1.20 Payment of Forfeitures

(A) In any case where the defendant has been convicted of violating a tribal ordinance and a forfeiture has been imposed, the defendant shall have 60 days to pay the forfeiture. At the end of the allotted time for payment, if the defendant has not paid, he or she may

appear before the court and for good cause shown, the court may extend the time for payment up to 60 additional days.

(B) If the defendant has not paid within the time allotted by the court, in order to satisfy the unpaid forfeiture the court may order any of the following:

(1) If the defendant is an employee of the Stockbridge-Munsee Community or any other employer within the Court's jurisdiction, the Court may order the defendant's wages garnished until the forfeiture is satisfied;

(2) If the defendant is a tribal member, the Court may order that the amount of the unpaid forfeiture from any per capita payment distributed by the Stockbridge-Munsee Community be withheld and applied toward the defendant's unpaid forfeiture, provided that such withholding is in compliance with federal law.

(3) Sell any property confiscated in connection with an offense or violation. Upon such sale, the proceeds shall be applied to satisfy the forfeiture. Any surplus money shall be returned to the defendant. Any remaining balance due shall constitute an unsatisfied judgment.

ETHICAL PROVISIONS FOR JUDGES

Section 1.21 Preface to Ethical Code

(A) This code sets standards of judicial conduct for Stockbridge-Munsee judges. The purpose of the code is to encourage a spirit of fairness toward persons brought before Stockbridge-Munsee Tribal Courts and to ensure fundamental fairness and due process in Stockbridge-Munsee Tribal Court proceedings.

Section 1.22 Who is Bound By This Code

(A) This code applies to the following persons:

(1) Anyone, whether or not a lawyer, who is an officer of a tribal judicial system and is performing judicial functions is a judge for the purpose of this code. All judges shall comply with this code except as provided below.

(B) PART-TIME JUDGES. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by tribal law or custom to devote time to some other profession or occupation. A part-time judge:

(1) is required to comply with this code unless otherwise exempted;

(2) should not practice law either as a lawyer or an advocate:

- (a) in the tribal court on which he or she serves,
- (b) in any court subject to the appellate jurisdiction of the tribal court or council on which he or she serves;

(3) should not act as a lawyer or advocate in a proceeding in which he or she has served or in any related proceeding.

(C) JUDGE PRO TEMPORE. A judge pro tempore, as defined under § 5(A) of this chapter:

(1) is required to comply with this code unless otherwise exempted.

(2) should not appear as a lawyer or advocate in a proceeding in which he or she has served as a judge or in any related proceedings.

(D) RETIRED JUDGE. A retired judge who received the same compensation as a full-time judge on the court from which he/she is retired and is eligible for recall to judicial service should comply with all the provisions of this code except § 27(C) that prohibits most extrajudicial appointments. However, such a retired judge shall refrain from judicial service during the period of an extrajudicial appointment which would otherwise be prohibited by § 27(C). All other retired judges eligible for recall to judicial service but not receiving compensation as a full-time judge shall comply with the provisions of this code governing part-time judges.

Section 1.23 Honesty and Independence of the Stockbridge-Munsee Judiciary

(A) A Stockbridge-Munsee judge shall uphold the integrity and independence of the Stockbridge-Munsee judiciary. An independent and honorable Stockbridge-Munsee judiciary is essential to justice in the tribal community. A Stockbridge-Munsee judge shall help create and maintain such a judiciary, and shall observe high standards of conduct toward achieving this goal.

(1) A judge shall encourage a separation between the judicial branch and other branches of tribal government, and shall avoid any contact or duty that violates such a separation.

(2) A judge shall not participate in legislative or executive decision making except where such participation is in accordance with the tradition of the Tribe.

Section 1.24 Impropriety and the Appearance of Impropriety

(A) A Stockbridge-Munsee judge shall avoid impropriety and the appearance of impropriety in all his/her activities.

(1) A Stockbridge-Munsee judge shall respect and comply with the law and tradition of the Tribe and shall at all times act in a manner that promotes public confidence in the honesty and impartiality of the Stockbridge-Munsee judiciary.

(2) A judge shall not allow family, social or other personal relationships to influence his/her judicial conduct. He/she shall not attempt to use the prestige of his/her office to advance the private interests of others; nor shall he/she convey the impression that anyone has special influence on the judge.

Section 1.25 Diligence and Impartiality

(A) A Stockbridge-Munsee judge shall perform the duties of the office impartiality and diligently.

(1) The judicial duties of a tribal judge shall take precedence over all other activities. The judicial duties of the judge include all the duties of the office prescribed by tribal law, custom or tradition. In the performance of these duties, the following standards apply:

(B) ADJUDICATIVE RESPONSIBILITIES:

(1) A Stockbridge-Munsee judge shall adhere to the laws, customs and traditions of the Tribe. Decisions shall be unswayed by partisan interests, public clamor, political pressure, or fear of criticism, and shall resist influences on the Court by other tribal officials, governmental officials or any others attempting to improperly influence the Court.

(2) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, advocates and others with whom he/she deals in his/her official capacity and shall require similar conduct of other persons in Court proceedings and those court personnel who are subject to the judge's direction and control.

(3) A tribal judge shall give to every person who is legally interested in a proceeding, or his/her representative, a full right to be heard according to tribal law and tradition. A judge shall avoid all out-of-court or other communications with tribal officials, agents, or others concerning a pending proceeding unless all parties to the proceeding are present or represented. A judge may however, obtain the advice of a disinterested expert on Federal law, or on tribal law, custom or tradition or on other sources of law applicable to a proceeding before the court if the request for advice is limited to points of law or tradition and does not involve the particular merits of the case. Ordinarily the parties shall be given a reasonable opportunity to respond to the information provided by the expert.

(4) A Stockbridge-Munsee judge shall maintain order in the court. He/she shall not interfere in proceedings except where necessary to protect the rights of the

parties. A Stockbridge-Munsee judge shall not take an advocate's role. Similarly, a judge shall rely on only those procedures prescribed by the laws and customs of the tribe.

(5) A Stockbridge-Munsee judge shall dispose promptly of the business of the court.

(6) A Stockbridge-Munsee judge shall not comment publicly on any proceeding pending in court and shall also prohibit other court personnel from such public comment.

(C) ADMINISTRATIVE RESPONSIBILITIES

(1) A judge shall diligently perform his/her administrative responsibilities.

(2) A judge shall require his/her staff and Court officials to observe high standards of honesty and diligence.

(3) A judge shall initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(D) DISQUALIFICATIONS

(1) A Stockbridge-Munsee judge shall disqualify himself/herself in a proceeding in which his/her impartiality might reasonably be questioned, including instances where:

- (a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
- (b) the judge served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the judge has been directly associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;
- (c) the judge knows that he/she individually (or any member of the judges family), residing in his/her household has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings;
- (d) the judge or his/her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:

- (i) is a party to the proceeding, or an officer, director, or trustee of a party;
- (ii) is acting as a lawyer or advocate in the proceeding;
- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) is to the tribal judge's knowledge likely to be a material witness in the proceeding

(E) ALTERNATIVE OF DISQUALIFICATION

(1) A judge disqualified by the terms of Section 1.25 (D)(1)(c) or (D)(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his or her disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree on the record that the judge's participation is not prejudicial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Section 1.26 Improvement of the Legal System

(A) Stockbridge-Munsee judge may engage in activities to improve the law, the legal system and the administration of justice. A judge, may engage in the following activities, if in doing so, he/she does not cast doubt on his/her capacity to decide impartially any issue that may come before the court:

- (1) The judge may speak, write, lecture, teach and participate in other activities concerning tribal law and custom, the legal system of the tribe and the administration of justice.
- (2) The judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal legal system and the administration of justice, and he/she may otherwise consult with a tribal executive or legislative body or official but only on matters concerning the general administration of justice.
- (3) The judge may serve as a member, officer, or director of an organization or tribal government agency devoted to the improvement of tribal law, its legal system or the administration of justice. The judge may assist such an organization in raising funds and may participate in that management and investment. He/she may make recommendations to public and private fund-granting agencies on projects and programs concerning tribal law, its legal system and the administration of justice. A tribal judge may not serve as a member, officer or director of any other tribal governmental entity.

Section 1.27 Extra-judicial Activities

(A) A tribal judge shall regulate his/her extrajudicial activities to minimize the risk of conflict with judicial duties.

(1) AVOCATIONAL ACTIVITIES. A tribal judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities of the tribe, if these activities do not interfere with the performance of his/her duties.

(2) CIVIL AND CHARITABLE ACTIVITIES. A tribal judge may participate in civic, charitable, and other tribal activities that do not reflect upon his/her impartiality or interfere with the performance of his/her judicial duties. A tribal judge may participate in any tribal educational, religious, charitable or similar organization.

(a) A tribal judge shall not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before him/her or will be involved in adversary proceedings in any tribal court.

(B) FINANCIAL ACTIVITIES

(1) A tribal judge shall avoid financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the performance of his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent transactions with lawyers or others likely to come before the court on which he/she serves.

(2) A tribal judge may hold and manage investments, and engage in other activity for compensation, but shall not ordinarily serve as an officer, director, manager or employee of any on-reservation business. However in extenuating circumstances, as where the tribe is unable to provide an adequate judicial salary but is willing to allow full-time judges to supplement their income through commercial activities, the tribal judge may then participate in the operation of a business.

(3) Except as allowed by the laws and traditions of the tribe, neither a judge nor a member of his/her family residing in the household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his/her impartiality in judicial proceedings, or on the judge's appearance of fairness.

(C) EXTRA-JUDICIAL APPOINTMENTS. Unless allowed by tribal law or tradition, a Stockbridge-Munsee judge shall not accept appointment to any tribal governmental entity or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the tribal legal system, or the administration of justice. A Stockbridge Munsee judge, however, may represent the tribe on ceremonial occasions or in connection with historical, educational, and cultural activities.

Section 1.28 Political Activities of Stockbridge-Munsee Judges

(A) A Stockbridge-Munsee judge shall refrain from political activity inappropriate to his/her judicial office.

(1) Political conduct in general. Unless authorized by tribal law or tradition, a Stockbridge-Munsee judge shall not engage in any tribal political activity except on behalf of measures to improve the law, the tribal legal system, or the administration of justice.

(2) CAMPAIGN CONDUCT. A candidate, including an incumbent judge, for a tribal judicial office that is filled by tribal election:

- (a) Shall maintain the dignity appropriate to judicial office and shall refrain from any political activity that might interfere with the performance of his/her judicial duties; Furthermore, a Stockbridge-Munsee judge shall encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her.
- (b) Shall not make pledges or promises of conduct in judicial office other than the faithful and impartial performance of the duties of the office, nor announce his/her views on disputed legal or political issues.

OTHER PROVISIONS

Section 1.29 Time

(A) COMPUTATION. In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided however, that any time period under eleven (11) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or legal tribal holiday.

(B) ENLARGEMENT. The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

Section 1.30 Court Costs

(A) In addition to such other costs as may be assessed when a trial is held, defendants found guilty in a forfeiture action shall be subject to the following costs:

- (1) Court costs for all actions shall be \$20.

(B) The schedule of deposits shall include the costs set above.

Section 1.31 Monies

(A) All monies received as filing fees or court costs or suit taxes shall be deposited by the Tribal Treasurer in a tribal account designated solely for promoting the policies and administration of this code. The Chief Judge shall have disbursement authority.

(B) All forfeitures collected pursuant to this code shall be deposited in the Tribe's general account.

Section 1.32 Irregularities

(A) Any violation notice, complaint, summons, warrant, or similar document whose matter does not literally conform to the requirements prescribed in this code or Court rules, shall not thereby be rendered invalid if the matter contained in the document substantially achieves the purposes of the code provisions.

(B) However, no such document shall be valid unless it contains such signature or signatures as are prescribed by this code.

Section 1.33 Advocates

(A) A party to an action shall have the right to be represented by an advocate at all hearings at his or her own expense.

(B) Except as provided in (1), no advocate shall be admitted to practice before the Stockbridge-Munsee Tribal Court unless he or she has successfully passed a standard written examination given by the Court.

(1) The Court may, in its discretion, admit as advocates those persons who by their experience or education demonstrate the necessary understanding of the law.

(C) The examination shall test the advocate's knowledge of Indian Law and Stockbridge-Munsee Tribal Law.

(D) Passing the examination entitles the advocate to practice before the Stockbridge-Munsee Tribal Court. The Chief Judge, with the approval of the Tribal Council, may establish a fee for administering the examination.

(E) The Court at its discretion may, subject to availability of Tribal Court advocate funding, provide an advocate for a defendant/respondent to the action who in the Court's determination is unable to afford an advocate.

Section 1.34 Juveniles

(A) The class of juveniles shall include all individuals who have not achieved their eighteenth (18th) birthday.

(B) Court processing and court proceedings concerning juveniles shall, except as provided herein, proceed in the same manner set forth for adults.

(C) At the request of a juvenile charged with an offense the Court may, at its discretion, adopt informal procedures for the resolution of such pending charge or charges against such juvenile.

(D) All juvenile records of the Court shall be closed and unavailable for public information, except as may be ordered by the Court.

(E) Juvenile files and records shall be kept separate from the files and records of adults.

Section 1.35 Amendments and Severability

(A) AMENDMENTS: Amendments to this code will be effective upon enactment by the Stockbridge-Munsee Community Tribal Council without further review by the Secretary of the Interior.

(B) SEVERABILITY: If any section, provision, or portion of this code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this code will not be affected thereby. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees for damages that may occur as a result of reliance upon or conformance with this code.

Section 1.36 Limitations

(A) Civil Actions may be commenced within three (3) years after the right accrues, except as may be otherwise provided by tribal law.

(B) An action is commenced when the summons naming the defendant and the complaint are filed with the Stockbridge-Munsee Tribal Court, except no action shall be deemed commenced as to any defendant upon whom service of the summons and complaint has not been made pursuant to tribal law.

Section 1.37 Full Faith and Credit

(A) The judicial records, orders and judgments of outside courts shall have the same full faith and credit in the Stockbridge-Munsee Courts as do the acts, records, orders and judgments of the Stockbridge-Munsee Courts, if the Stockbridge-Munsee Court deems that the record, order or judgment is of sufficient reliability.

(1) For purposes of this section, the term "outside court" means the tribal, state or federal court from which the act, record, order or judgment was issued.

(B) In assessing whether the record, order or judgment is of sufficient reliability to receive full faith and credit in the Stockbridge-Munsee Court, the Court may consider whether:

(1) the court is a court of record.

(2) the court judgment offered in evidence is a valid judgment.

(a) In determining whether an outside court's judgment is a valid judgment, the Stockbridge-Munsee Court may consider whether:

- (i) The outside court had jurisdiction of the subject matter and over the person named in the judgment.
- (ii) The judgment is final under the laws of the outside court.
- (iii) The judgment is on the merits.
- (iv) The judgment was procured without fraud, duress or coercion.
- (v) The judgment was procured in compliance with procedures required by the outside court.

(3) the court certifies that it grants full faith and credit to the judicial records, orders and judgments of the courts of the Stockbridge-Munsee Court and to the acts of other governmental entities in this state.

(C) To qualify for admission as evidence in the Stockbridge-Munsee Courts:

(1) Copies of records, orders and judgments of the outside court shall be authenticated by the attestation of the clerk of the court. The seal, if any, of the court shall be affixed to the attestation.

Legislative History:

On November 19, 2002, Tribal Council amended by adding Section 1.10(D) [notice to Tribe], Resolution No. 070-02. Approval by BIA on December 27, 2002.

On March 4, 2004, Tribal Council amended by creating Section 1.13(G) [Harassment Temporary Restraining Orders and Injunctions], Resolution No. 06-04. Approval by BIA on March 29, 2004.

On October 11, 2006, Tribal Council amended by deleting Section 1.2(B); amends Section 1.13(G)(5)(C) and Section 1.33(E), Resolution No. 07-001. Approved by BIA on April 9, 2007.